

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO. 477 OF 2004
IN
CHAMBER SUMMONS NO.1211 OF 2003
IN
SUIT NO.4411 OF 1997

The State of Maharashtra

.. Appellant

v/s.

1. ICICI Bank Ltd. & anr.

.. Respondents

Ms.A.Kalyanram, A.G.P.for appellant.

Mr. Arun Siwach i/by M/s.Amarchand & Mangaldas for
respondent No.1.

Mr.J.B.Chinai, senior counsel i/by M/s.M.Ranchoddas
& Co. for for Respondent No.2.

Mr.N.V.Deshmukh, Court Receiver present.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 1st September, 2004

ORAL ORDER (Per R.M.Lodha, J.)

Heard Ms.A.Kalyanram, the learned A.G.P. for
the appellant and Mr.J.B.Chinai, the learned senior
counsel for the respondent No.2.

2. On 3rd August, 2004, we passed the following

order:-

"Issue notice to respondent no.2 to
show cause why the appeal be not admitted
and disposed of at admission stage. We
have only ordered the issuance of notice to
respondent no.2 as we are informed that
respondent no.2 is the only contesting
party and the chamber summons upon which
the impugned order came to be passed was
taken out by them.
2. Notice is made returnable on

24.08.2004."

In view thereof, we heard the appeal for admission and final disposal.

3. The first respondent viz. ICICI Bank Ltd. filed a suit before this court in the month of November, 1997 for recovery of an aggregate sum of Rs.101.29 crores and for other reliefs against the respondent No.2 herein ('the first defendant'). The notice of motion was taken out for appointment of Court Receiver as receiver of the properties of the first defendant, details of which were given in Exhibits A1 to A5, Exhibits B1 to B7 and Exhibit C to the plaint. By the order dated 7th January, 1998, the Court Receiver, High Court, Bombay was appointed as the Court Receiver in respect of the suit properties and the first defendant was appointed as an agent of the Court Receiver. The Court Receiver fixed an ad-hoc royalty of Rs.50,00,000/- per month for 2 cement plants in respect of which the first defendant was appointed as an agent. It is the case of the first defendant that they had regularly deposited the royalty at the rate of Rs.50,00,000/- per month from 7th January, 1998 and upto 31st December, 2002 and in all had deposited royalty in the sum of Rs.31,23,99,998/-. The Court Receiver invested the royalty amount deposited by the first defendant in fixed deposits from time to time. Somewhere in the

year 2001, upon The Recovery of Debts Due to Banks and Financial Institution Act, 1993 having been made applicable in the State of Maharashtra, the suit filed by ICICI Ltd. was transferred to the Debts Recovery Tribunal, Mumbai. The Court Receiver, High Court, Bombay was discharged and one Seven Star Securities India Pvt.Ltd. was appointed as private receiver. The Court Receiver, High Court, Bombay for the period it continued as the Court Receiver, debited a sum of Rs.1,69,03,000/- as commission on the royalty deposited by the first defendant and also as commission on interest earned by the investment of funds in the custody of Court Receiver.

4. The chamber summons was taken out by the first defendant inter alia for the following reliefs:-

- "(a) That this Hon'ble Court be pleased to waive the fees chargeable under Rule 591 of the Bombay High Court (Original Side) Rules, 1980 by the Respondent at the rate of 6% on the amounts of royalties recovered by the Respondent from Defendant NO.1 and at the rate of 5% on the interest earned on the investment of funds in the custody of the Respondent and in particular on the amounts of royalties recovered by the Respondent from Defendant No.1.
- (b) That pending the hearing and final disposal of the Chamber Summons, this Hon'ble Court be pleased to direct the Respondent not to levy any such fees and/or deduct any amounts towards such fees and in any event direct the Respondent to transfer the balance amount lying with the Respondent to Seven Star Securities

Private Limited
appointed by the Debt Recovery
Tribunal, Mumbai-I."

being

the

Receiver

5. The chamber summons was served upon the
plaintiff, the Court Receiver and other financial
institutions and the banks viz. (i) The Industrial
Finance Corporation of India Ltd., defendant No.2,
(ii) Industrial Development Bank of India,
defendant No.3, (iii) Life Insurance Corporation of
India, defendant No.4, (iv) Unit Trust of India,
defendant No.5, (v) General Insurance Corporation
of India, defendant No.6, (vi) Industrial
Investment Bank of India, defendant No.7, (vii)
National Insurance Company Ltd., defendant No.8,
(viii) New India Assurance Company Ltd., defendant
No.9, (ix) Oriental Insurance Company Ltd.,
defendant No.10, (x) United India Insurance Company
Ltd., defendant No.11, (xi) Rajasthan State
Industrial Investment Corpn., defendant No.12,
(xii) State Bank of India, defendant No.13, (xiii)
Bank of Tokyo, defendant No.14, (xiv) Syndicate
Bank, defendant No.15, (xv) Bank of Rajasthan,
defendant No.16, (xvi) Central Bank of India,
defendant No.17, (xvii) ANZ Grindlays Bank PLC,
defendant No.18, (xviii) The Industrial Credit and
Investment Corporation of India Ltd., defendant
No.19, (xix) Punjab National Bank, defendant No.20,
(xx) Punjab National Bank, defendant No.20, (xxi)
State Bank of Bikaner and Jaipur, defendant No.21,
(xxii) Bank of Baroda, defendant No.22 and (xxiii)

Hongkong & Shanghai Banking Corporation Ltd.,

defendant No.23.

6. The learned Chamber Judge disposed of the chamber summons by the order dated February 04, 2004 thus:

"1. Mr. Chinoy for the defendant No.1 submits that Defendant No.1 is willing to pay upto a sum of Rs.10/- Lakhs towards the Receiver's fee towards commission chargeable on the royalty and interest received on fixed deposits, instead of the fees fixed by the Court Receiver at the rate of 8%. Having regard to the facts and circumstances of the case, the submission made on behalf of the Defendant No.1 is accepted.

2. Court Receiver to charge sum of Rs.10/- lakhs towards, its charges in terms of Rule 591 of the High Court (Original Side) Rules. Court Receiver may take appropriate steps to get reimbursement from the Government in terms of this order. Government shall refund the requisite amount forthwith upon request made by the Court Receiver in that behalf in terms of this order.

3. Chamber Summons disposed of on the above terms."

7. The aforesaid order came to be corrected by the

order dated February 16, 2004 thus:

"1. It is brought to my notice that the cause title reproduced in the order passed by me on February 4, 2004 is incorrect, inasmuch as instead of Suit No.4411 of 1997, it has been mentioned as Summary Suit No.4411 of 1997. This is obviously a clerical error. Office to take steps to correct the said mistake.

2. It is also brought to my notice that in Paragraph 2 of the same order, instead of 'Rupees Ten Lakhs towards charges in terms of Rule 591', it ought to have been

mentioned as "Rupees Ten Lakhs towards royalty, of Rule interest 591". The Court Receiver, who is personally present in Court, fairly states that such correction be made. Accordingly, Office to take steps to carry out the aforesaid changes in Paragraph 2 of the order."

8. The orders dated February 04, 2004 and February 16, 2004 are under challenge in this appeal at the instance of the State Government.

9. Rule 591 of the Bombay High Court (O.S.) Rules prescribes the fees chargeable by the Receiver unless otherwise ordered by the Judge. As per Rule 592 the Court Receiver shall charge office expenses to suits, estates or matters under his management. Out of the monies standing in the credit of suit and the matter, the Court Receiver under Rule 593 is required to invest the said amount not immediately required for payment or for meeting the correct expenses relating to the suit or matter. Clause (b) of Rule 594 provides for the period for filing the account in the office of the Commissioner by the Court Receiver. It provides that the Court Receiver shall in the absence of any direction of the court or the Judge in chambers to the contrary, file in the office of the Commissioner his account from the date of his appointment to the end of the next calendar year within three months from the expiry of the said calendar year and thereafter within three months

from the expiry of each subsequent year. However, where entries in the account do not exceed a dozen on each side, the Court Receiver may file one account for a period not exceeding three years.

10. The fee prescribed in Rule 591 is the fee which the Court Receiver is entitled to charge unless otherwise ordered by the Judge in chambers. The Judge in chambers, however, can always reduce, modify or waive the fee provided in the scale under Rule 591. For such reduction, modification or waiver of fee by the chamber Judge under Rule 591, the circumstances must exist and reflected in the order. Though the order of the learned chamber Judge under Rule 591 is discretionary but such discretion has to be judicial and cannot be exercised arbitrarily or capriciously. Neither the affidavit in support of the notice of motion nor the impugned order reflects any basis for fixing Rs.10 lakhs towards royalty, interest and commission to the Court Receiver. Across the bar, it appears that the statement was made by the senior counsel on behalf of the first defendant that the first defendant was willing to pay upto Rs.10 lakhs towards royalty, interest and commission and the court accepted the same without indicating the reasons therefor. The fact of the matter is that the Court Receiver had already debited a sum of Rs.1,69,03,000/- as per the scale

prescribed in Rule 591 and the application by the first defendant was for waiver of fee chargeable by the Court Receiver and the refund of the amount. The impugned order does not indicate the reasons at all.

11. Before we close, we must deal with the submission of the learned senior counsel for the first defendant that no reply was filed by the Court Receiver in opposition to the chamber summons. It is true that no reply was filed by the Court Receiver but that did not obviate the necessity of indicating the reasons in support of the order. The appeal at the instance of the State Government is maintainable and we do not find substance in the submission of the learned senior counsel that the State Government has accepted the impugned order. The financial institutions and the banks are not necessary parties for the purposes of the appeal since the impugned order came to be passed on the chamber summons taken out by the first defendant.

12. In the circumstances, we are of the view that the impugned orders dated February 4, 2004 and the order dated February 16, 2004 cannot be sustained and the matter requires reconsideration by the learned chamber Judge.

13. We, accordingly, set aside the orders dated February 4, 2004 and February 16, 2004 and restore the chamber summons No.1211 of 2003 in Suit No.4411 of 1997 for fresh consideration in accordance with law.

14. We request the learned chamber Judge to hear and dispose of the chamber summons expeditiously.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)